

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 788 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI @ MARDE TALSIBHAI VAGRI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MS PUNANI AGPfor Respondent No. 1, 3

RULE NOT RECD BACK for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 9th August, 1998, made by the

Commissioner of Police, Rajkot City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

Along with the order of detention, the petitioner has been furnished the grounds of detention. Upon perusal of the grounds of detention, it appears that the petitioner is branded as a 'dangerous person' and was indulging in series of criminal activities. Three offences have been registered against the petitioner in the year 1996 and 1997. Two of the said offences are still pending investigation. Besides the aforesaid three offences registered against the petitioner, the concerned authority has examined two witnesses who have made statements to the effect that the petitioner was known to the said witnesses and that the petitioner was indulging into anti social activities like theft and assault. The petitioner is also alleged to be possessing lethal weapons. In one of the cases, the petitioner is alleged to have used sword. In the incidents narrated by the witnesses, the petitioner is alleged to have wielded knife at the crowd gathered at the spot of the incident causing breach of public tranquility.

The offences registered against the petitioner are that of theft and assault and also of use of lethal weapons. Such criminal acts are necessarily prejudicial to the maintenance of law and order. However, such offences committed against the individual can not be said to be prejudicial to the maintenance of public order. Besides, even the statements of the witnesses do disclose that the petitioner's wrath was directed against the particular individual i.e. the concerned witness alone. Further there is nothing on the record to indicate that the Detaining Authority or any other officer had examined the genuineness of the said statements or the trustworthiness of the witnesses. In my view, the order of preventive detention can not be based on bare statements of the witnesses without verifying the genuineness of such statements and the trustworthiness of the witnesses. The continued detention of the petitioner is, therefore, not warranted.

Petition is, therefore, allowed. The impugned order dated 9th August, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless, is required to be detained in some other case, be released forthwith.

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JOSHI*